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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,363	10/14/2005	Marie-Pascale Latorse	P/3610-63	9080
2352 7590 10/01/2008 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			EXAMINER	
			PRYOR, ALTON NATHANIEL	
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
10/01/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,363	<b>Applicant(s)</b> LATORSE ET AL.
	<b>Examiner</b> ALTON N. PRYOR	<b>Art Unit</b> 1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 June 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1 and 15-17 is/are allowed.
- 6) Claim(s) 13,14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1668)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

Applicant's arguments filed 6/24/08 have been fully considered but they are not persuasive. See arguments below. Previous rejections/issues not addressed below have been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moloney et al (US 6503933; 1/7/03) and The Agrichemicals Handbook, A0090 / Aug 91. Moloney teaches a fungicide composition comprising compounds of the instant claims. Moloney teaches compounds of formula I where R1,R2 = H; R3 = 3 E,OE, 5-CF3; R4 = 2-Me,5-NO<sub>2</sub>; E = aryl, heterocyclyl, cycloalkyl or cycloalkenyl. Moloney discloses that fungicidal composition comprising the compounds contain diluent or carrier. See column 3 lines 24-26. Moloney teaches a method of applying a composition comprising 0.0001 to 1 % of the compound to plants to control fungi although the primary composition contains 5-95 % of the active compound. See column 4 lines 32-38. Moloney teaches that the composition can be applied to plant foliage, plant seed or directly to the soil by a spraying mechanism. See column 4 lines 39-56. Moloney teaches a method of controlling fungal diseases such as downy mildew in tomato, potato, and vine crops. See column 3 lines 6-23. Moloney teaches that to the compositions comprising the

compounds can be added one or more additional actives, e.g. fungicides. Column 3 lines 29-34. Moloney differs from the instant invention in that Moloney does not teach an invention comprising chlorothalonil, and therefore ratio or dose is not taught for instant compounds of formula I and chlorothalonil. However, The Agrichemicals Handbook teaches the compound chlorothalonil is a fungicide. The Agrichemicals Handbook teaches that chlorothalonil is applied to fruit, vegetable (tomato) and cereal crops to control fungi. See reference. It would have been obvious to one having ordinary skill in the art to modify the invention of Moloney to include the chlorothalonil taught by The Agrichemicals Handbook. One would have been motivated to do this since Moloney welcomes the inclusion of other actives such as fungicides. An additional reason for doing this would have been to enhance the effectiveness of Moloney's invention. The combining of the references results in the production of a product / composition / method comprising both active compounds of formula I and chlorothalonil. With respect to the ratio and amounts, it would have been obvious to one having ordinary skill in the art to optimize the amounts / ratios of ingredients. One would have been motivated to do this in order to make the most effective invention for controlling fungi in crops. Claim 1 recites fluopicolide/chlorothanil in a weight ratio of from 0.005 to 1 which appears to equate to a weight ratio of 1:200. If this is the correct interpretation, the specification provides no data supporting such a ratio. Claims 13 and 14 recite ratio ranges 0.1001:0.2 and 0.12:0.2 respectively. However, no data are provided to support said ratio ranges. Claims 12, 13 and 14 appear to recite ratios of 1:6.7, 1:2 and 1:7, respectively, for the fluopicolide/chlorothanil combination. The results for the later ratios

are unclear (see Table 1). For example in Table 1 for the 1:2 ratio practical doses for 70% efficacy are 3.2 and 6.4, whereas the theoretical doses for 70% efficacy are 7 and 14. Why are practical doses so different (3.2 versus 6.4)? The Examiner has the same question for said theoretical doses (7 versus 14). Claims do not appear to be commensurate in scope with data provided in the specification.

Rejection under 35 USC 112, 2<sup>nd</sup>

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and 14 recite the limitation "weight ratio is from 0.1001 to 0.2" and weight ratio is from 0.12 to 0.2" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m. .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/  
Primary Examiner, Art Unit 1616

Application/Control Number: 10/553,363  
Art Unit: 1616

Page 6